

08 CV. 7427

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUAN E. REYES, on his own behalf
and on behalf of all others similarly situated,

JUDGE SULLIVAN

Plaintiff,

-against-

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

ESTATE INFORMATION SERVICES, LLC

Defendant.

X

Plaintiff, by and through his undersigned attorney, alleges upon knowledge as to himself and his own acts, and as to all other matters upon information and belief, brings this complaint against the above-named defendant and in support thereof alleges the following:

PRELIMINARY STATEMENT

1. Plaintiff brings this action on his own behalf and on behalf of all others similarly situated for damages arising from the defendant's violation of §1692 *et. seq.* of Title 15 of the United States Code, the Fair Debt Collections Practices Act (hereinafter "FDCPA"), which prohibits debt collectors within the meaning of 15 U.S.C. § 1692a(6) from engaging in abusive, deceptive and unfair practices.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331. This is an action for violation of 15 U.S.C. § 1692.
3. Venue is proper in this district under 28 U.S.C. § 1391(b)(2).

PARTIES

4. Plaintiff Juan E. Reyes (hereinafter "Reyes") is a resident of the State of New York, Bronx County. On or about August 23, 2007, plaintiff received and came into contact with a form debt collection notice from defendant at plaintiff's home address. Exhibit A.

5. Defendant Estate Information Services, LLC, is a Foreign Limited Liability Company and is a New York City Department of Consumer Affairs licensed collection agency. The New York State Division of Corporations lists Estate Information Services, LLC at 5330 East Main Street, Ste 200, Columbus, Ohio, 43213. Defendant attempts to collect debts alleged to be due another.

CLASS ACTION ALLEGATIONS

6. Plaintiff brings this action as a New York State class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure (hereinafter "FRCP"), on behalf of himself and all consumers who have received debt collection notices directed to the survivors of a deceased family member which are in violation of the FDCPA, as indicated in paragraphs numbered 16-18, and their

successors in interest (the "Class"). Excluded from the Class is the defendant herein, and any person, firm, trust, corporation, or other entity related to or affiliated with the defendant, including, without limitation, persons who are officers, directors, employees, associates or partners of Estate Information Services, LLC.

7. This action is properly maintained as a class action. This Class satisfies all the requirements of Rule 23 for maintaining a class action.

8. The Class is so numerous that joinder of all members is impracticable. Upon information and belief, dozens of persons have received debt collection notices from the defendant which violate various provisions of the FDCPA.

9. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. These common questions of law and fact include, without limitation:

- a. Whether the defendant violated various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692e and 1692g(a)(4).
- b. Whether plaintiff and the Class have been injured by the defendant's conduct;
- c. Whether plaintiff and the Class have sustained damages and are entitled to restitution as a result of defendant's wrongdoing and, if so, what is the proper measure and appropriate statutory formula to be applied in determining such damages and restitution.

10. Plaintiff's claims are typical of the claims of the Class, and plaintiff has no interests

adverse or antagonistic to the interests of other members of the Class.

11. Plaintiff will fairly and adequately protect the interests of the Class and has retained experienced counsel, competent in the prosecution of class action litigation.

12. A class action is superior to other methods for the fair and efficient adjudication of the claims herein asserted. Plaintiff anticipates that no unusual difficulties are likely to be encountered in the management of this class action.

13. A class action will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would engender. Class treatment also will permit the adjudication of relatively small claims by many Class members who could not otherwise afford to seek legal redress for the wrongs complained of herein. Absent a class action the Class members will continue to suffer losses of statutorily protected rights as well as monetary damages and if defendant's conduct will proceed without remedy it will continue to reap and retain the proceeds of its ill-gotten gains.

14. Defendant has acted on grounds generally applicable to the entire Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

STATEMENT OF FACTS

15. Starting on or about August 23, 2007, defendant sent a collection letter regarding a Capital One account. The letter stated, "[I]f you have any knowledge of whether or not an estate has been or will be opened through the probate court, please contact us upon receipt of this letter so that an estate claim can be presented to an appropriate party, or the balance may be paid by returning the below payment coupon." Upon receipt of defendant's letter, plaintiff opened and read it. A copy of said letter is annexed hereto as Exhibit A.

FIRST CAUSE OF ACTION

16. Each of the above allegations is incorporated herein.
17. The letter violated numerous provisions of the FDCPA by the debt collector's failure to send the consumer a written notice containing a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector. 15 U.S.C. § 1692g(a)(4).
18. As a result of defendant's abusive, deceptive and unfair debt collection practices, plaintiff has been damaged.

follows:

- a) Declaring that this action is properly maintainable as a class action and certifying plaintiff as Class representative;
- b) Awarding plaintiff statutory damages;
- c) Awarding class members the maximum statutory damages;
- d) Awarding plaintiff and the class costs of this action, including reasonable attorneys' fees and expenses; and
- e) Awarding plaintiff and the class such other and further relief as the Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38 of the FRCP, plaintiff hereby demands a trial by jury.

Dated: August 21, 2008
Uniondale, New York



Abraham Kleinman (AK-6300)

KLEINMAN LLC

626 RexCorp Plaza

Uniondale, New York 11556-0626

Telephone (516) 522-2621

Facsimile (888) 522-1692

Estate Information Services, LLC

2323 Lake Club Drive Suite 300
Columbus, OH 43232

Deceased Account Collection Agency

PH: (614) 322-2758 toll free (877) 714-3739 FAX: (614) 322-2761



Website: www.probate-services.com

See Reverse Side For Special State Disclosures

August 23, 2007

8/21

MATTER # 1775224

To The Estate of JUAN REYES
775 Southern Blvd APT 33C
Bronx NY 10455-2112

RE: CREDITOR NAME: CAPITAL ONE
ACCOUNT TYPE: MASTERCARD
CARD HOLDER: JUAN REYES
AMOUNT OF DEBT: \$639.43

Dear Executor(trix):

Please accept our condolences for your loss on behalf of our client. We understand this may be a difficult time for you and hope that we may assist you with a resolution on the outstanding balance owed.

Estate Information Services represents the above captioned creditor with regard to this account on which the decedent was liable. If you have any knowledge of whether or not an estate has been or will be opened through the probate court, please contact us upon receipt of this letter so that an estate claim can be presented to the appropriate party, or the balance may be paid by returning the below payment coupon.

Again we extend our deepest sympathies to the family during this difficult time. You have our commitment that we will do our best to make the resolution of the payment process as quick and as easy as possible.

Federal law requires us to advise you that this is an attempt to collect a debt from the estate of the decedent, and any information obtained will be used for that purpose. Unless Estate Information Services receives notification in writing or by telephone call, within thirty (30) days from receipt of this letter, we will assume the debt is valid. Estate Information Services, LLC provide the name and address of the original creditor if different from the current creditor.

---Cut along this line---



estate information services, inc.

Please Make Check Payable To:
Estate Information Services, LLC

2323 Lake Club Drive, Suite 300
Columbus, OH 43232

Creditor: CAPITAL ONE
Card Holder: JUAN, REYES
Matter Nbr: 1775224
Amount Due: \$639.43
Account Type: MASTERCARD

Special State Disclosures

FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE www.ago.state.co.us/cab.htm.

The business hours for Estate Information Services, LLC are Monday – Friday, 8:00 a.m. until 8:00 p.m. Eastern Standard Time. This agency may be contacted using the following phone numbers: (614) 322-2758; toll free (877) 714-3739; fax (614) 322-2761 or by email at eisi@probate-services.com.

NOTICE OF IMPORTANT RIGHTS: YOU HAVE THE RIGHT TO MAKE WRITTEN OR ORAL REQUEST THAT TELEPHONE CALLS REGARDING YOUR DEBT NOT BE MADE TO YOU AT YOUR PLACE OF EMPLOYMENT. ANY SUCH ORAL REQUEST WILL BE VALID FOR ONLY TEN DAYS UNLESS YOU PROVIDE WRITTEN CONFIRMATION OR THE REQUEST POSTMARKED OR DELIVERED WITHIN SEVEN DAYS OF SUCH REQUEST. YOU MAY TERMINATE THIS REQUEST BY WRITING TO ESTATE INFORMATION SERVICES, LLC., 2323 LAKE CLUB DRIVE, SUITE 300, COLUMBUS, OHIO 43232. HOURS OF OPERATION ARE: MONDAY – FRIDAY, 8:00 A.M. UNTIL 8:00 P.M. EASTERN STANDARD TIME. (Mass Regs. Code Tit 209, Section 18.15.)

This collection agency is licensed by the Minnesota Department of Commerce.

The license number for Estate Information Services, LLC by the New York City Department of Consumer Affairs is: 1216912

The permit number assigned to Estate Information Services, LLC by the State of North Carolina is: 4138

Estate Information Services, LLC has been issued an exemption from licensing by the State of Tennessee dated, May 8, 2005.

Estate Information Services, LLC has been issued an exemption from licensing by the State of Wisconsin dated, February 17, 2006.